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Democracy and the Organization of American States

One need only cast an occasional glance at a newspaper to realize that the South American countries comprise what is often referred to as a "political hotbed." In the center of this hotbed is the OAS, the Organization of American States. Born of discord, the Preamble of its charter declares that its members are "confident that the true significance of American solidarity and good neighborliness can only mean the consolidation on this continent, within the framework of democratic institutions, of a system of individual liberty and social justice based on respect for the essential rights of man" Professor Thomas, who served with the U.S. Foreign Service as an American Vice-Consul, together with Mrs. Thomas, present analysis of that organization and its ramifications on democracy in the member states. This analysis includes a discussion of the legal force of the OAS Charter and other member state agreements. A most serious dilemma faced by the OAS is the conflict between the philosophy of democracy and the principle of non-intervention. The Thomas' conclude that it is time for the OAS to honor its mandate in furtherance of the principles on which the organization was founded.

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INTRODUCTION

The crisis in western civilization manifested by wars and revolutions has made our century one of the most turbulent in the long and unending struggle between democracy and authoritarianism. With the explosion of scientific and technical progress has come,

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hand in hand, a perfection of the leviathan state far beyond any Machiavellian dream. On the one side the democrats proclaim that the life, the mind, the heart and the soul of each individual is important for itself and that any economic system, socialist or private, is tested by its usefulness in preserving and liberating the individual. On the other side, totalitarianism, whether it be of the extreme right or the extreme left, proclaims that the highest development of civilization is the state; that this alone is important; and that all individual development is tested by its utility in promoting the interest of the state. Between these two philosophies, one maintaining the value of the individual and his development and the other proclaiming the value of the state to which everything must be sacrificed, there is an unbridgeable abyss.

In recent years the tempo of the struggle has quickened in the Western Hemisphere to such an extent as to threaten the very solidarity of the American community of nations. From the beginning of the inter-American movement,¹ democracy was proclaimed as a common denominator among North America, Central America and South America, although admittedly many nations of the hemisphere have often had periods of dictatorships. The inter-American system slowly developed over the years on the premise that all the members thereof maintained at least an ideological fidelity to the ethical conceptions of democratic society in spite of widely different physical conditions, differences of religion, of social background, of economic interest, of cultural background. But the forces which have led a great number of Europeans and Asians to accept the disciplined submission to the authoritarian state as an escape from the responsibilities and isolation of freedom have continued their work in the nations of the Americas. And again there has been cast over the hemisphere the dark shadow of the establishment in the Americas of a non-American totalitarian government—international communism. With it has come a serious challenge to the stated fundamental values of the inter-American system, a corrosion of mutual trust, and a threat to the stability of the Organization of American States (OAS).

That such a situation has come about may seem an anomaly

1. On the beginnings of Pan America and its historical antecedents see BEMIS, *THE LATIN AMERICAN POLICY OF THE UNITED STATES* chs. II-VI (1943); GIL, *EVOLUCION DEL PANAMERICANISMO* 19-37 (1933); LOCKEY, *PAN-AMERICANISM, ITS BEGINNINGS* (1920); SANCHEZ Y SANCHEZ, *CURSO DE DERECHO INTERNACIONAL PUBLICO AMERICANO* 167-81 (1943); WHITAKER, *THE WESTERN HEMISPHERE IDEA: ITS RISE AND DECLINE* chs. I & II (1954); YPES, *EL PANAMERICANISMO Y EL DERECHO INTERNACIONAL* 3-62 (1930); Alvarez, *Latin America and International Law*, 3 AM. J. INT'L L. 269 (1909).

when one considers that ever since the Wars of Independence, the republican form of government and the democratic political ideal have been proclaimed for each of the nations of the Americas.² This is true to such an extent that the people of the Western Hemisphere are firm in the belief that this area of the world is the hemisphere of freedom. They have adopted similar internal democratic constitutions, and their political leaders, even the most dictatorial and absolutist, have all worked against a background where the democratic ideals are persistently repeated. Their diplomats have signed international treaties extolling democratic republican institutions and proclaiming that the defense of democracy is a guiding principle for the American family of nations. With this history it might then be supposed that democracy has not only become a form of government and a way of life within the confines of each national boundary, but has also developed into a legal norm of the inter-American system binding each of the American republics. If this were true, it would follow that any American nation which departed from the principles of democracy would be committing not only a violation of its own internal constitutional norm, but at the same time would be breaching international law and in so doing could invite upon itself sanctions from the other members of the hemispheric community to uphold the law.³

Before it can be determined whether or not inter-American commitments which have solemnly proclaimed the existence of a "common democracy throughout the Americas" have developed into enforceable legal norms, there must be an examination of the fundamental meaning of democracy, for democracy is one of the magic words of the twentieth century with a wide range of different uses in different parts of the world.⁴ Because of its misuse and distortion by communist nations, the term can be used in international life

2. For example, all of the American republics have adopted a constitutional structure similar to that of the United States which embodies a republican-democratic form of government. See FITZGIBBON, *THE CONSTITUTIONS OF THE AMERICAS* (1948). An excellent article by Jaffin, *New World Constitutional Harmony: A Pan-American Panorama*, 42 COLUM. L. REV. 523 (1942), traces and explains American constitutional ideology. See WHITAKER, *op. cit. supra* note 1, at 1-21, for a discussion of the early ideological background of the hemispheric movement. Many Latin American jurists proclaim democracy and liberty as a unifying force in the Americas and as bases of inter-American solidarity. See, e.g., YPES, *op. Cit. supra* note 1, at 432; Alvarez, *Le Developpement du Droit des Gens Dans le Nouveau-Monde*, XXV TRANSACT. GROT. SOC'Y 169 (1939).

3. See KELSEN, *PRINCIPLES OF INTERNATIONAL LAW* 18-23 (1952), and Kunz, *Sanctions in International Law*, 54 AM. J. INT'L L. 324 (1960), for a discussion of international delicts and sanctions therefor.

4. QUINTANILLA, *A LATIN AMERICAN SPEAKS* 219-36 (1943); THOMAS, *COMMUNISM VERSUS INTERNATIONAL LAW* 51-55 (1953).

with only the utmost caution. Yet democracy in the western sense cannot be precisely defined because democracy is neither a system nor a set of institutions nor a code of law nor a combination of policies. Rather, it is a belief in human nature and a code of behavior which translates that belief into thought and action.

To say that the classical western concept of democracy cannot be precisely defined does not mean that one cannot delineate its central theme nor its primary elements. Western democracy has a central theme relating to form, content and aspirations. First and foremost it is a designation of a certain form of government, that is, of the manner in which a state is organized. In this sense democracy is a legal and formal concept. It indicates how political decisions are made, not what these decisions are in substance. It designates a method for the establishment of the political will, not its object, end or means. Political democracy is a form of government by persons who are freely chosen by, and responsible to, the governed. The population as a whole must be able to exercise a choice as to who is to govern them under minimum conditions of pressure and force, and even more vital, they must have the opportunity of peacefully revising or reversing their choice.⁵ Western political democracy rests upon the right of a people to make their own mistakes, plus the opportunity to correct those mistakes.

The tale of democracy does not end with political democracy. In the words of Quincy Wright:

Democracy is a theory, policy, procedure, and art, emphasizing human welfare, individual freedom, popular participation, and general tolerance. It can adapt itself to many conditions, but it thrives in an atmosphere of education, toleration, peace, and prosperity. Ignorance, dogma, war, and poverty are its enemies. They breed absolute and arbitrary government, uncritical and lethargic people, which are the reverse of democracy.⁶

Thus the overtones of democracy are ethical in nature, concerning that interrelated complex of ideas which centers around the notions of right and wrong, justice and humanity, liberty and peace. These ethical aspirations of democracy are attitudes or ways of life which appear not only in the political sphere, not only in public life, but also in the realm of economics, in family life, community life, social relations, and in international affairs. In other words, in all contacts between man and man. Democracy must in-

5. FORSTER, TWO CHEERS FOR DEMOCRACY 69 (1951); MAYO, DEMOCRACY AND MARXISM 254-60 (1955); PADILLA, FREE MEN OF AMERICA 68-78 (1943).

6. UNESCO, DEMOCRACY IN A WORLD OF TENSIONS 446 (McKeon ed. 1951).

clude these ethical aspirations even though they are dimly grasped and at best imperfectly realized. For whenever these ethical elements are repudiated, there is no authority to limit the power of the state, the political and economic liberty of the citizen is lost, human dignity vanishes, mutual fears replace mutual confidence as the basis of all human contacts, and, in the international sphere, power politics—naked and avowed—takes the place of the rule of law.

These then are the form, content and aspirations of democracy. They blend and merge confusingly one into the other in the historical evolution of western democracy and have become inseparably connected in men's minds. While democracy does not evolve in precisely the same manner in any two countries, for each people has its characteristic institutions and traditions and each epoch its peculiar problems, nonetheless, in the twentieth century, no nation can claim it is a democracy in the western or classical sense of the word unless it contains at least some rudimentary elements of political democracy. It must also have some understanding of the humanistic goals of democracy which can be called human rights and fundamental freedoms. The double aspect of democracy—popular constitutional government plus human rights and fundamental freedoms—are therefore complementary aspects of how political communities seek to resolve the problems of power, welfare, freedom and creativeness. They are parts of each other; each fruitless unless set in the context of the other.

I. POLITICAL DEMOCRACY

The American republics, from their inception as separate nations, have proclaimed that their governments were dedicated to the theories and practices of political democracy. This common democratic ideal, even if not always practiced, has been the foundation on which the new world community was slowly but patiently constructed. The Monroe Doctrine was decreed in part because of North America's opposition to any intervention by the Holy Alliance to re-establish divine-right dynasties at the expense of the hard won battles fought to establish republican, democratic governments in Latin America.⁷ Three years later the Latin Ameri-

7. "It is impossible that the allied powers should extend their political system to any portion of either continent without endangering our peace and happiness; nor can one believe that our southern brethren, if left to themselves, would adopt it of their own accord. It is equally impossible, therefore, that we should behold such interposition, in any form, with indifference." Monroe Doctrine as set forth in VI MOORE, *A DIGEST OF INTERNATIONAL LAW* 401 (1906). For a summary of the background of

cans, meeting in the Congress of Panama of 1826,⁸ reaffirmed Monroe's stand and, under the inspiration of Bolivar, attempted to secure the goals of political democracy throughout the hemisphere by drawing up the Treaty of Union, League and Perpetual Confederation. Included in the Treaty was a provision for expulsion from the proposed federation of any state which deserted the democratic form of government.⁹ This treaty failed to become effective for lack of ratification by the signatory nations,¹⁰ but it stands as an unflinching monument to Bolivar's farsighted political perspicience.

Through the years that followed, however, the principle of political democracy as a cornerstone of the Pan American movement received scant attention. The leaders of the nations showed little enthusiasm for establishing a legal norm for the community which would obligate the members to maintain internal political democracy or for a system of sanctions which could be directed against any state departing from a democratic form of government. The majority of Latin American writers and statesmen, while voicing their basic and common devotion to political democracy, were far more vociferous in proclaiming that no nation or group of nations had the legal right to interfere in the domestic or internal affairs of another state. This principle of non-intervention was given far higher precedence than the goal of political democracy. They emphasized a basic tenet of international law—the right of independence. That is, a state must be free to manage its internal affairs as it sees fit without interference from other states except to the extent that it is bound by international law. A state thereby is free to choose any form of government or political institutions it desires. As a corollary of this right of independence other states are subjected by international law to a duty of non-intervention in the internal affairs of another state, and consequently any intervention to hinder or prevent a state from exercising its right to

the Monroe Doctrine, see THOMAS & THOMAS, *NON-INTERVENTION—THE LAW AND ITS IMPORT IN THE AMERICAS* 10-14 (1956).

8. Accounts and summaries of the Congress of Panama may be found in I ANTOKOLETZ, *DERECHO INTERNACIONAL PUBLICO* 341-42 (1938); BEMIS, JOHN QUINCY ADAMS AND THE FOUNDATIONS OF AMERICAN FOREIGN POLICY 543-65 (1949); Collings, *The Congress of Bolivar*, 6 *HISPANIC AMERICAN HISTORICAL REV.* 194 (1926).

9. Treaty of Perpetual Union, League and Confederation between the Republics of Colombia, Central America, Peru and the United Mexican States, July 15, 1826, art. 29. *CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, INTERNATIONAL CONFERENCES OF AMERICAN STATES 1889-1928*, xxiv, xxix (1931).

10. Only Gran Colombia ratified the treaty, and it did so with reservation.

choose its own government, even by means of a violent revolution and even though the government which emerges is totalitarian, is an illicit act under rules of international law.¹¹

This doctrine of the right of a people to establish any form of government they desired made great strides about the time of the French Revolution. That was a time of optimism when liberalists assumed unquestioningly that democratic constitutionalism would in due course become the paramount form of government everywhere, and that logically the ultimate beneficiaries of a doctrine of non-intervention in the internal form of government would be the people of a state asserting their natural rights against oppressive rulers.¹² Consequently, Kant, who has been called the father of the doctrine of non-intervention, laid down the prohibition against intervention in absolute terms, yet qualified it by his statement that the civil constitution in every state shall be republican.¹³ To Kant, the purpose of international law was to maintain world peace, and he felt that world peace would be maintained only if and when the republican form of government had become universal. Accordingly, Kant's concept of international law was based upon a community of nations having similar political ideas and hopes. His prohibition against intervention was absolute only as to the members of that community of nations, and was not relevant to nations which did not accept certain principles of behavior fortified by agreement upon some fundamental values and beliefs.¹⁴

The late nineteenth century and early twentieth century saw a shift away from ethical values as part of the concept of the community of nations, and the geographical ambit of international law was extended to all states,¹⁵ whatever their internal form of gov-

11. The attitude of Latin America to non-intervention and the reasons therefor are contained in THOMAS & THOMAS, *op. cit. supra* note 7, at chs. II & III.

12. *Id.* at 7.

13. HERSHEY, *ESSENTIALS OF INTERNATIONAL PUBLIC LAW AND ORGANIZATION* 243 n.18 (1927), claims that the principle of non-intervention appears to have first been put forth by KANT, *ESSAY ON PERPETUAL PEACE* (1795). Hershey fails, however, to mention the fact that Kant's seemingly absolute prohibition of intervention and his stand for unfettered internal sovereignty might be considered as modified by his statement that the civil constitution in every state should be republican.

14. For a statement of Kant's thesis, see LOEWENSTEIN, *POLITICAL RECONSTRUCTION* 17-20 (1946).

15. Hall asserts the principle as follows: "Thus a state may place itself under any form of government that it wishes, and may frame its social institutions upon any model. To foreign states the political or social doctrines which may be exemplified in it . . . are legally immaterial." HALL, *INTERNATIONAL LAW* 43-44 (6th ed. 1909).

ernment. This resulted in modifying Kant's original thesis, leaving nothing but the absolute imperative—that the internal form of government of any state was unimportant to the world community or to the peace of the world and therefore no right of intervention in any internal form of government existed.

Because of historical circumstances, Latin America has been subjected to many interventions by the United States, European nations, and neighboring Latin American states.¹⁶ Consequently it is not surprising to find that their statesmen and jurists, for the most part, firmly uphold the principle of non-intervention in domestic affairs; they are not content to rely upon general international legal principles, but rather codify these rules into multilateral treaties which govern all the nations of the Americas.¹⁷ Despite this insistence on intransigent non-intervention, a vociferous minority has always kept alive the issue of democracy as it relates to the American community, claiming that where political democracy and human rights and freedoms are denied, a nation has no right to feel that the sacred curtain of national sovereignty should be permitted to act as a shield for domestic policy from outside interference. In 1837, for example, Pedro Felix Vicuna of Chile published a widely read pamphlet urging the establishment of an international organization, which he called the General Congress of America, in which he sought to vest the power to support popular revolutions against tyrannical governments.¹⁸ In 1844, Juan Bautista Alberdi, while a refugee in Chile from the tyranny of the Argentine dictatorship of Rosas, maintained that intervention should be used to promote democratic governments in the American states.¹⁹ In December, 1847, at the Congress of Lima, a Bolivian proposal that collective intervention should be used as a method of establishing and supporting constitutional governments was thoroughly discussed, but was finally rejected.²⁰

In 1907 an Ecuadorian diplomat, Carlos R. Tobar, advocated the adoption of the legal rule that the American republics should

16. See citations in note 11 *supra*.

17. CONVENTION ON RIGHTS AND DUTIES OF STATES, SEVENTH INTERNATIONAL CONFERENCE OF AMERICAN STATES, INTERNATIONAL CONFERENCES OF AMERICAN STATES FIRST SUPP., art. 8, 1933-1940, 121-23 (1940); ADDITIONAL PROTOCOL RELATIVE TO NON-INTERVENTION, INTER-AMERICAN CONFERENCE FOR THE MAINTENANCE OF PEACE, art. 1 *Id.* at 191-92; ART. 15, CHARTER OF THE ORGANIZATION OF AMERICAN STATES as set forth in U.S. DEP'T OF STATE, PUB. NO. 3263, NINTH INTERNATIONAL CONFERENCE OF AMERICAN STATES 169-70 (1948).

18. BURR & HUSSEY, I DOCUMENTS ON INTER-AMERICAN COOPERATION, 1810-1881, Doc. No. 20 (1955).

19. *Id.*, Doc. No. 24.

20. I ULLOA, CONGRESO AMERICANO DE LIMA clxx (1938).

not grant recognition to governments which came into power by revolutions contrary to the constitution of a state.²¹ He felt that by using non-recognition as a sanction in this manner, greater respect for constitutional order and political democracy would follow naturally. While a majority of the nations viewed this doctrine with some scepticism, the Central American republics decided to experiment with it. Thus, they incorporated the Tobar Doctrine, with some clarification and addition, into two treaties. It was agreed by these nations that none of the signatories would recognize a government coming to power as a result of a coup d'état or revolution "so long as the freely elected representatives of the people thereof, have not constitutionally reorganized the country."²² Moreover it was agreed that even after subsequent legitimation by the will of the people substantially declared, the states would not grant recognition if the government was to continue to be headed by leaders of the revolution or made up of them.

Here was the first attempt in the Americas to create by treaty an international law norm supporting political democracy and sanctioning through collective non-recognition a state having a revolutionary government which refused to hold democratic elections. Although the United States was not a party to these treaties, it followed the principles laid down therein for granting or withholding recognition in relation to the signatories thereof until the treaties were repudiated by the Central American nations.²³

In 1914 President Wilson attempted to bring into being a multilateral treaty guarantee of democracy by all the American nations. While his proposed Pan American Pact was concerned primarily with the establishment of a system of hemispheric collective security, it also sought to secure representative democracy throughout the hemisphere. The first article of the pact provided that "the high contracting parties . . . hereby join one another in a common and mutual guarantee of territorial integrity and of political independence under republican form of government." In other words, if an American state departed from the republican form of government, it would apparently be excluded from the mutual

21. ANDERSON, *EL GOBIERNO DE FACTO* 26 (1925); García, *Estudios sobre la Doctrina Tobar*, 20 TRABAJOS DEL CUARTO CONGRESO CIENTIFICO (1° PAN-AMERICANO) CELEBRADO EN SANTIAGO DE CHILE DEL 25 DE DICIEMBRE DE 1908 AL 5 DE ENERO 1909, 326-29 (1912); Stowell, *The Doctrine of Constitutional Legitimacy*, 25 AM. J. INT'L L. 302 (1931).

22. Additional Treaty to the Treaty of Peace 1907, II MALLOY, *TREATIES, CONVENTIONS, INTERNATIONAL ACTS, PROTOCOLS & AGREEMENTS*, 2397 (1910). General Treaty of Peace and Amity 1923, 17 AM. J. INT'L L. SUPP. 117 (1923).

23. THOMAS & THOMAS, *op. cit. supra* note 7, at 248-49.

guarantee of territorial integrity or political independence. This Pact died in the proposal stage. The Latin American statesmen who were sounded out as to its feasibility were hesitant to endorse it.²⁴

It was not until there began to occur a rapid spread of totalitarianism, both of the right and of the left, after World War I, that the inter-American system began to concern itself seriously with the principles of political democracy. By 1936, threats of world conquest emanating from fascist and communist dictatorships were having repercussions in the Western Hemisphere. At the Inter-American Conference for the Maintenance of Peace which met at Buenos Aires in 1936, the nations of the Americas signed a declaration which stressed "the existence of a common democracy throughout America" as a basis of inter-American solidarity and cooperation. The conferences and meetings held during and following World War II contained scattered references to democracy in their final acts, most of them as resolutions or recommendations to the governments to prevent the spread of subversive doctrines and activities inimical to democracy in the continent.²⁵ None of these resolutions or recommendations were imperatively worded to permit them to be interpreted as laying down a legal norm binding upon the member states to maintain a system of political democracy within their national borders.

Nevertheless certain wartime actions taken by the American nations did have a bearing upon the form of government to be maintained in each American state. Although collective non-recognition of regimes coming to power by revolutionary or unconstitutional methods had not been adopted as an inter-American rule of law, the Emergency Advisory Committee for the Political Defense of the Continent, created in 1942 for the purpose of studying and coordinating measures for preventing subversive activities that might be harmful to the security of the American republics, brought again to the fore collective non-recognition of certain governments—this time on a hemispheric scale. In 1943, a resolution was adopted recommending to all American governments that for the duration of the war they should not recognize a new government constituted by force before consulting with one another in order

24. The terms of the Wilson Pact may be found in *II PAPERS RELATING TO THE FOREIGN RELATIONS OF THE UNITED STATES, THE LANSING PAPERS 1914-1920*, 495-96 (1940).

25. Resumes of all of these statements and declarations are contained in *PAN AMERICAN UNION, MANUAL OF INTER-AMERICAN RELATIONS, CONFERENCES AND ORGANIZATION SERIES No. 26*, at 74-80 (1953).

to determine, among other things, the circumstances which led to the establishment of a new government.²⁶

In 1943 the government of Bolivia was seized through a coup d'état by a revolutionary junta which gave indications of anti-democratic and pro-fascist leanings. After consultation initiated by the Emergency Advisory Committee, 19 American States agreed to withhold recognition.²⁷ The effect of this collective action forced Bolivia to purge its government of some of its pro-totalitarian elements.²⁸ The inter-American system was less successful when it later applied the same procedure to Argentina.²⁹ This wartime action was a definite recognition that the foreign policy of any state is based upon its internal type of government, and in time of emergency such as a world war, the form of internal government of each and every state must become the concern of all of the states of the inter-American community.

When the war ended, the question of using collective non-recognition as a sanction against new regimes suspect of being anti-democratic was aired at the February, 1945 Conference on War and Peace held in Mexico City. Some American states were violently opposed to such procedure on the grounds that it again opened wide the door to intervention. These states proposed that the whole institution of recognition should be abolished and suggested that whenever a new government was established, either legitimately or by revolution, the pre-existing diplomatic relations should not be disturbed.³⁰ Those nations which felt that the American states would continue to evade internal political democracy no matter how strongly they extolled the virtues thereof, backed a resolution by Guatemala which recommended that the American republics refrain from "granting recognition to and maintaining relations with anti-democratic regimes which, in the future, may establish themselves in any of the countries of the continent; and in particular with regimes which may result from a coup d'état against legitimately established governments of a democratic structure." The Guatemalan resolution likewise recommended a special test whereby such regimes could be adjudged,

26. See Spaeth & Sanders, *The Emergency Advisory Committee for Political Defense*, 38 AM. J. INT'L L. 218 (1944).

27. INTER-AMERICAN EMERGENCY ADVISORY COMMITTEE FOR POLITICAL DEFENSE, SECOND ANNUAL REPORT 16 (1944).

28. SMITH, *YANKEE DIPLOMACY* 94-98 (1953).

29. Fenwick, *Intervention: Individual and Collective*, 39 AM. J. INT'L L. 645, 660 (1945).

30. See, e.g., a project of convention submitted by Ecuador on the abolition of the recognition of *de facto* governments as set forth in PAN AMERICAN UNION, *HANDBOOK FOR DELEGATES TO THE NINTH INTERNATIONAL CONFERENCE OF AMERICAN STATES* 87-88 (1947).

namely the extent to which the popular will in a particular country may have contributed to their establishment according to the free judgment of each state.³¹

In proposing the use of the weapon of nonrecognition against anti-democratic regimes, Guatemala pointed out that such regimes constituted a serious danger to the unity, peace and defense of the continent for it was impossible to expect from such regimes full, sincere or effective cooperation in the democratic advancement of Pan Americanism in time of peace or war.

Guatemala declared that World War II had created a world-wide demand that the rights of man should be recognized and protected on the international level, and that the inter-American movement should therefore support this universal yearning by recognizing that anti-democratic regimes were the primary cause of denial of human rights and freedoms.³²

The nations attending the Mexico City Conference were not yet ready to take even such a tentative step toward advancing the inter-American ideal of political democracy, and neatly sidestepped the issue by referring the proposal of Guatemala to the Inter-American Juridical Committee for study and consideration, the results of which were to be reported at the Ninth Conference of American States in 1948.³³ At that time the Inter-American Juridical Committee declared that its study had shown that the Guatemalan proposal would again subject the American states to intervention in internal matters, and this would have deplorable consequences; hence the Juridical Committee could not support the proposal.³⁴

The Governments which supported the Guatemalan position in Mexico were not easily brushed aside, and they continued to seek ways and means of assuring internal democracy in all the nations of the Americas. In November, 1945, Eduardo Rodriguez Larreta, the Uruguayan Minister of Foreign Affairs, handed a sensational note to the Ambassador of each of the American republics to Uruguay.³⁵ In this note he accepted Kant's thesis equating

31. *Id.* at 88-89.

32. PAN AMERICAN UNION, INTER-AMERICAN JURIDICAL COMMITTEE REPORT AND DRAFT CONVENTION ON RECOGNITION OF DE FACTO GOVERNMENTS 9 (1950).

33. PAN AMERICAN UNION, RESOLUTION XXXVIII, DEFENSE AND PRESERVATION OF DEMOCRACY IN AMERICA, INTER-AMERICAN CONFERENCE ON PROBLEMS OF WAR AND PEACE, REPORT SUBMITTED TO THE GOVERNING BOARD OF THE PAN AMERICAN UNION BY THE DIRECTOR GENERAL 67 (Cong. & Conf. Series No. 47, 1945).

34. Fenwick, *The Problems of the Recognition of De Facto Governments*, INTER-AMERICAN JURIDICAL YEAR BOOK 18, 33 (1948).

35. PAN AMERICAN UNION, CONSULTATION OF THE GOVERNMENT OF URUGUAY AND REPLIES OF THE GOVERNMENTS ON THE PARALLELISM BE-

peace with the democratic form of Government, highlighting what he termed the "parallelism between peace and democracy." Rodríguez Larreta listed the numerous resolutions taken at Inter-American Conferences which affirmed adherence to democratic ideals and in which the 21 republics had agreed that it was advisable to protect the integrity of these ideals. He then emphasized that the need in the Americas was to transform these oft-repeated principles and standards into realities. Therefore, he suggested that within the inter-American system there should be established definite responsibility for collective intervention to assure democracy whenever circumstances require such assurance. Larreta stated:

Peace is safe only where democratic principles of government prevail. The basic rights of man are part of these principles. Thus, though once exclusively domestic concerns, they now affect international interests and require international protection. In case of their violation in any American republic, the community of nations should take collective multilateral action to restore full democracy there. Such action is really nothing more than the fulfillment of obligations freely assumed by the American republics, all of whom have proclaimed at inter-American conferences their devotion to democracy and the rights of man.³⁶

All of the nations replied to the note, eight expressing approval and thirteen disapproval.³⁷ Those disapproving declared that it would be difficult to discover whether a particular government was democratic, for it might be fulfilling the ideals of democracy in some of its actions but not in others. Furthermore, it was observed that since democracy in all its aspects was such a utopian state, it was doubtful if any nation now in existence or ever having existed had lived up to all the true ideals encompassed in the term. Some replies alleged that democracy would of necessity include "representative democracy," yet a government might come into power through a revolution and might well represent the desires and the will of the people of a nation even though not elected democratically. On the other hand, it was known in Latin America that a state had a totalitarian government which denied many of the liberties conceived to be inherent in a democratic system and which, nevertheless, came into power by constitutional means and maintained itself with popular support and democratic elections.

TWEEN DEMOCRACY AND PEACE, THE INTERNATIONAL RIGHTS OF MAN AND COLLECTIVE ACTION IN DEFENSE OF THOSE PRINCIPLES (May, 1946).

36. *Ibid.*

37. *Ibid.* See also QUINTANILLA, PANAMERICANISM AND DEMOCRACY 39-41 (1952); Selte-Camara Filho, *A Doutrina Larreta*, 3 Boletim da Sociedade de Direito Internacional 18 (1946).

And finally it was alleged that it was impossible to equate democracy with peace in all instances, for some governments, although democratic in nature, had on occasions constituted a major threat to the peace.

The fact that the Larreta Doctrine was rejected by the majority of the American republics is not as important as the fact that over one third of the republics, even in face of all apparent obstacles, were willing to accept it as a principle of the international law governing the Americas. This was a strong indication that in the Western Hemisphere the quest to make internal democracy an international legal norm was by no means dead.

At the Ninth International Conference of American States held in Bogota in 1948, the whole inter-American system was revamped and a basic Charter, known as the Charter of Bogota, was adopted for the organization. But prior to the adoption of this instrument, long hours of debate took place over the issue of the establishment of democratic regimes in the hemisphere. The Brazilian delegation sought to make membership in the reconstituted inter-American system conditional not only upon ratification of the new Charter, but also upon the adoption of a democratic form of government. Requirements for such a government were listed as follows: freedom of the ballot, the opportunity or possibility of private enterprise, a government founded upon more than one political party, and a guarantee of the fundamental rights of man.³⁸ Although Brazil's stand received some support, it ultimately was rejected.

In spite of an unwillingness to adopt the views of Guatemala set forth at the Mexico City Conference, or to adopt the doctrine of Rodriguez Larreta, or the position of Brazil, the Charter of the Organization of American States³⁹ contained many proclamations affirming belief in the aims and aspirations of democracy. The Preamble of the Charter declares that its signatories are:

confident that the true significance of American solidarity and good neighborliness can only mean the consolidation on this continent, within the framework of democratic institutions, of a system of individual liberty and social justice based on respect for the essential rights of man

Article 5(d) of the Charter "reaffirms" that the "solidarity of the American States and the high aims which are sought through it require the political organization of those states on the basis of the effective exercise of representative democracy."

38. U.S. DEP'T OF STATE, PUB. NO. 3263, *op. cit. supra* note 17, at 15.

39. The Charter of the OAS may be found in U.S. DEP'T OF STATE, PUB. NO. 3263, *id.* at 166-86.

There has been some discussion among international law authorities as to the legal effect of a preamble to an international instrument. Some writers declare that it is not a binding portion of the treaty,⁴⁰ while other authorities argue that a preamble has the same legal validity and same binding force as the other sections of the treaty, and that if it is couched in terms of legal obligation, a legal obligation arises.⁴¹ Whichever stand is accepted as to the Preamble of the Charter of Bogota, the conclusion arrived at must be the same. It is of ideological rather than legal significance for it sets forth certain political ideals without guaranteeing their realization by establishing a legal obligation to behave in a certain manner. The statement that the signatory nations are confident that American solidarity means the consolidation in the Americas of a system of individual liberty and social justice within a framework of democratic institutions does not set forth a basic obligation of the members of the organization.

What then of Article 5(d) in which the states "reaffirm" that the solidarity of the Americas requires the political organization of American states on the basis of representative democracy? Does the reaffirmation of a requirement have any legal effect at all? Does it constitute an obligation on the part of each and every ratifying state to have a government based on representative democracy? To reaffirm is to affirm again in order to strengthen. To affirm means to maintain as true. The statement, "we maintain as true that continental solidarity requires each state to have representative democracy" obviously spells out no legal obligations.⁴² Such a statement places neither on each state nor on the OAS the duty to see that this condition is brought about.

These considerations indicate that under the Charter of Bogota there is no right of collective intervention by the Organization of American States to secure a democratic form of government in each of the American republics nor is there an international treaty duty for each of the republics to establish a democratic form of government. This interpretation is given added weight in view of Article 13 of the Charter of Bogota which declares that "each state has the right to develop its political life freely and naturally," that is, according to its nature, without outside interference. As

40. Pollux, *The Interpretation of the Charter*, 23 BRIT. Y.B. INT'L L. 54 (1946).

41. GOODRICH & HAMBRO, *CHARTER OF THE UNITED NATIONS* 89 (rev. ed. 1949).

42. "A legal obligation to behave in a certain way is established if a sanction is attached to the contrary behavior." Kelsen, *THE LAW OF THE UNITED NATIONS* 9 (1950).

this is couched in terms of a legal right, there would appear to be a duty of non-interference on the part of the organization.

But the Charter of Bogota is not the sole instrument governing the inter-American system.⁴³ The Inter American Treaty of Reciprocal Assistance, signed at Rio in 1947 and ratified by all of the American States is also an integral part of the OAS.⁴⁴

In the Preamble to the Rio Treaty there appears this statement:

Considering:

That the obligation of mutual assistance and common defense of the American Republics is essentially related to their democratic ideals and to their will to cooperate permanently in the fulfillment of the principles and purposes of a policy of peace;

That the American regional community affirms as a manifest truth that juridical organization is a necessary prerequisite of security and peace, and that peace is founded on justice and moral order and, consequently, on the international recognition and protection of human rights and freedoms, on the indispensable well-being of the people, and on the effectiveness of democracy for the international realization of justice and security

If there is no importance to be attached to the location of a statement in a treaty, the sole fact of importance being whether or not the words used are legally obligatory, one arrives at the same conclusion arrived at under the Charter of Bogota. "Considering that the obligation of mutual assistance is related to democratic ideals" and "considering that peace is founded on the effectiveness of democracy" are merely clauses indicating that the signatories have taken these things into account, and are actually less forceful than the reaffirmations and confidence expressed in the Charter of Bogota. They certainly define no legal duty of either the members of the organization or the organization itself. Their sole legal validity consists in their use as evidences of the basic motivating ideas which the framers had in view.

It follows then that the two fundamental documents of the inter-American system, while giving florid recognition to the ideals of political democracy, do not back their high phrases by making internal democracy a legally enforceable rule of inter-American law. Both of these documents stress the fact that it is not the internal government of a nation, but rather the international situa-

43. On the OAS and its constitutional background, see THOMAS & THOMAS, *op. cit. supra* note 7, at 114.

44. The Inter-American Treaty of Reciprocal Assistance is set forth in U.S. DEP'T OF STATE, PUB. NO. 3016; INTER-AMERICAN CONFERENCE FOR THE MAINTENANCE OF CONTINENTAL PEACE AND SECURITY 59-65 (1958).

tion created by the acts of a government (whatever type that government might be) that is important to the peaceful development of the inter-American community. In other words, there exists in these treaties no right of collective intervention for democracy per se. But should a nation have an internal government which creates an international problem threatening the independence, sovereignty, inviolability or the integrity of the territory of any American state, methods have been established by treaties to remedy the situation. The paramount and primary purpose of the OAS is the maintenance of hemispheric peace. The realization of political democracy within each nation is apparently left up to the people of each nation.

II. HUMAN RIGHTS

As mentioned earlier, political democracy is but one aspect of democracy. One can, to some extent, distinguish between democracy in a political sense and democracy in a human sense, although it must be admitted that these different aspects of the word are mutually connective by a derivative relation. True political democracy is the result of political maturity which is the outgrowth of long development of aspirations and hopes of human betterment. Advancing human rights and fundamental freedoms are part of the process of growth toward political maturity.

In the long slow development of international law, human rights have traditionally been the concern of the individual state. Each state recognized rights for its citizens or withheld rights from them according to its own concepts, and no state could justifiably criticize the internal behavior of its neighbors.⁴⁵ But in the inter-American system, there was an early recognition that a minimum of human rights should be of international concern. Bolivar's proposed Treaty of Union, League and Perpetual Confederation, discussed at the Congress of Panama in 1826, sought to establish a continental, international citizenship and in addition called upon all signatories to abolish slavery.⁴⁶ This was a far cry from any extensive concept of individual human rights in all the countries of the hemisphere as a problem deserving international legal protection, and even this minimum failed to be adopted. In the years that followed, while political democracy or the more nebulous

45. Green, *General Principles of Law and Human Rights*, 8 CURRENT LEGAL PROBLEMS 162 (1955).

46. Arts. 24, 25 & 27 of the Treaty as contained in CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, *op. cit. supra* note 9, at xxviii.

idealisms of democracy were vocally stressed at inter-American gatherings, human rights as such were virtually ignored.

Only since World War II has there been an admission in the Western Hemisphere that human rights are a subject of international concern, that "governments which systematically disregard the rights of their own people are not likely to respect the rights of other nations and other people and are likely to seek their objectives by coercion and force in the international field."⁴⁷ Several resolutions of the 1945 Conference held in Mexico City dealt with human rights, notably Resolution XL on International Protection of the Essential Rights of Man which proclaimed the adherence of the American republics to the principles established by international law for safeguarding the essential rights of man and declared support of a system of international protection of these rights.⁴⁸ Apparently the resolution was not aimed at the fact that violation of human rights was to be accepted as a breach of international law or even that such violation might constitute a threat to hemispheric peace, but rather was adopted "to eliminate the misuse of diplomatic protection of citizens abroad."⁴⁹ The inalienable rights of man were still considered subordinate to principles of state sovereignty and nonintervention.

At the Rio Conference of 1947, partisans of human rights introduced into the preamble of the Inter-American Treaty of Reciprocal Assistance an idealistic (but nonlegal) statement that:

The American regional community affirms as a manifest truth . . . that peace is founded on justice and moral order, and consequently, on the international recognition and protection of human rights and freedom

When the Ninth International Conference of American States met the following year in Bogota, there was a strong movement to incorporate into the Charter of the Organization of American States a legal obligation binding each nation to respect human rights and fundamental freedoms with a concomitant duty placed on the OAS to see that each nation lived up to its obligations in this respect.⁵⁰ Those opposing argued⁵¹ that the Charter was to be in the na-

47. Marshall, *No Compromise on Essential Freedoms*, 19 DEP'T STATE BULL. 432 (1948).

48. Resumes of these resolutions may be found PAN AMERICAN UNION, MANUAL OF INTER-AMERICAN RELATIONS, *op. cit. supra* note 25, at 113-14.

49. RESOLUTIONS XL, PAN AMERICAN UNION, INTER-AMERICAN CONFERENCE ON PROBLEMS OF WAR AND PEACE, *op. cit. supra* note 33, at 69.

50. PAN AMERICAN UNION, INTER-AMERICAN JUDICIAL COMMITTEE REPORT TO THE INTER-AMERICAN COUNCIL OF JURISTS CONCERNING RESOLUTION XXXI OF THE CONFERENCE OF BOGOTA 2 (1949).

51. U.S. DEP'T OF STATE, PUB. NO. 3263, *op. cit. supra* note 17, at 13.

ture of a constitutional instrument and should be confined to provisions establishing the OAS, defining the nature, function and relationship of its organs, and all other policies of the inter-American system should be set up in separate agreements. For the most part this viewpoint prevailed, and the Charter generalizes about the legal duty to respect human rights and fundamental freedoms.

The preamble declares that "the true significance of American solidarity and good neighborliness can only mean the consolidation on this continent . . . of a system of individual liberty and social justice based on respect for the essential rights of man." The preamble also incorporates statements relating to the encouragement and promotion of respect for human rights and fundamental freedoms appearing in the Charter of the United Nations by a declaration that the signatories solemnly reaffirm the principles and purposes of the United Nations. And in Article 5(j) of the Charter of the OAS it is stated:

the American States proclaim the fundamental rights of the individual without distinction as to race, nationality, creed or sex.

As none of these declarations were expressed in terms of a binding legal obligation, their sole utility was to leave open the way for further inter-American legislation by treaty in this field. However, Article 13 of the Charter of Bogota observes:

Each state has the right to develop its cultural, political and economic life freely and naturally. In this free development, the state shall respect the rights of the individual and the principles of universal morality.

It can be demonstrated that the final sentence of Article 13 establishes a legal duty on the part of states. Grammatically speaking, "shall," when used in the third person, expresses an obligation, a command. If the authors of Article 13 desired to express simple futurity, the article would have read "the state will" The word "shall" is here equivalent to the word "must." It is imperative not merely directory. Consequently Article 13 can be interpreted to declare that each state has a legal right to develop its own way of existence but in so doing it has the legal duty to respect the rights of individuals. But even if this interpretation is granted, neither individual states nor the Organization of American States is given the right to take enforcement action to establish human rights in a state which fails in its obligation. Only if a violation of these values results in a threat to the peace of the hemisphere could collective intervention be undertaken under the terms of the Rio Treaty.⁵²

52. See Rio Treaty Art. 6, *supra* note 44.

But those nations seeking to give international protection to human rights in the Western Hemisphere were not satisfied with these statements and demanded more. So a further action was taken at the Ninth Conference, the adoption of a resolution known as the American Declaration of the Rights and Duties of Man.⁵³ This Declaration constitutes the first comprehensive inter-governmental statement of human rights in the history of the hemisphere. While it was nothing more than a statement of aims and hopes and was not intended to be legally binding, it had educational and inspirational value. It was a source of new hope to those people throughout the continent working to assure international legal protection to human rights. It symbolized the deep concern of many statesmen over defining these rights and establishing an acknowledgement of the fact that there was a connection between their denial and acts of aggression against other nations, thus constituting a continual threat to hemisphere peace.

The list of rights to which the inter-American system would seek to give international protection are of a great variety. First there are certain rights which may be described as inalienable and fundamental—inalienable because there are no circumstances in which a nation could justify a denial of them, and fundamental because a persistent denial of them will undermine and finally destroy any community based on democratic precepts.⁵⁴ An ordered society, dedicated to the goals which democracy has set, really should not confer such rights on the individual, it should presuppose them. Into this class would fall:

The right to life, liberty and personal security (art. 1)

The right to equality before the law (art. 2)

The right to religious freedom and worship (art. 3)

The right to freedom of investigation, opinion, expression and dissemination (art. 4)

The right to the inviolability and transmission of correspondence (art. 10)

The right to recognition of juridical personality and of basic civil rights (art. 17)

The right to a fair trial (art. 18)

The right to nationality (art. 19)

The right to vote and to participate in government (art. 20)

53. FINAL ACT, RES. XXX, as contained in U.S. DEP'T OF STATE, PUB. No. 3263, *op. cit. supra* note 17, at 260-66.

54. DE VISSCHER, THEORY AND REALITY IN PUBLIC INTERNATIONAL LAW 122-29 (1957); LAUTERPACHT, INTERNATIONAL LAW AND HUMAN RIGHTS 123-26 (1950); Fenwick, *Pan American Action for the Protection of Human Rights*, 243 ANNALS 149 (1946).

The right of assembly (art. 21)

The right of association (art. 22)

The right of petition (art. 24)

The right to protection from arbitrary arrest (art. 25)

The right to due process of law (art. 26)

These rights can all be classified as the basic political rights which underlie the political aspects of democracy. They are the important personal and civil rights which make it clear that the people are the master in a democratic state and the sovereign the servant. They set the bounds of political authority and reserve to the individual those areas of individual differences necessary for the operation of popular government and political democracy. One other political right is listed, namely the right of every person in the case of pursuit not resulting from ordinary crimes to seek and receive asylum in foreign territory (art. 27). If all the other political rights listed were fully realized in every nation of the Western Hemisphere, the necessity for such an inter-American right would fall by the wayside. Under present conditions in Latin America, its inclusion is a good indication of hard-headed realism which is as much a part of the Latin American character as wonderful idealism.

The second group of rights listed in the declaration are derived from the general economic objectives of a democratic community:

The right to education and equality of opportunity (art. 12)

The right to work and to fair remuneration (art. 14)

The right to leisure time and to the use thereof (art. 15)

The right to social security (art. 16)

The right to private property (art. 23)

In the nineteenth century the emphasis of western democracy was placed on the political aspects of democracy, but in the twentieth century this emphasis has shifted to the economics of democracy. While many nations of the Western Hemisphere have achieved some measure of political democracy, many of them are in dire need of a far fuller measure of economic democracy. Economic democracy implies something in the nature of an economic order which has in view a leveling of economic privilege and economic inequalities to the advantage of the underprivileged sections of the population.⁵⁵ The ideal of economic equality is a matter of approximation and not absolutes, but democracy cannot survive unless political democracy demonstrably yields economic better-

55. THOMAS, *EQUALITY* 79 (1949); Wright, *Human Rights and the World Order*, 389 *INTERNATIONAL CONCILIATION* 238 (1943).

ment for the majority of the population. All historical experience shows that a people without hope of prosperity or a rough equality of opportunity will fall into the pit of tyranny. In a society with deep seated sources of economic discontent, extremism cannot be overcome simply by invoking the superior values of political democracy. Nevertheless economic equality is no panacea in itself. It is void of democratic content apart from its coefficient of political democracy or the ethical aspirations of democracy. Thus the American Declaration of the Rights and Duties of Man places important emphasis on the economic objectives, which are in most nations merely goals to be achieved and not legally enforceable rights which have been actually attained internally.

The final group of rights listed in the declaration can roughly be classified as some of the ethical aspirations underlying any democratic system. These include:

The right to protection of honor, personal reputation, and private and family life (art. 5)

The right to a family and to the protection thereof (art. 6)

The right to protection for mothers and children (art. 7)

The right to residence and movement (art. 8)

The right to the preservation of health and to well being (art. 11)

The right to the benefits of culture (art. 13)

These ethical aspirations indicate the belief that democracy as a political legal technique is not enough. If the leading ideas of mankind are not to languish they must show their power to realize the masses' obscure urge for a better ordained social order, greater happiness, and a fuller life for the common man. The immediate importance of these rights are less of achievement than intent. Their ideal has force, particularly in Latin America. Citizens of the United States tend to pay less attention to theory than to practice, but to Latin Americans, no matter how far practice falls short of high aims, these aims remain a living standard and no less a living reproach to those who violate them. Thus the American Declaration of the Rights and Duties of Man indicates an inter-American recognition of the fact that democracy must take place not only on the legal or political field, but also in the economic and ethical fields. The struggle must advance on all fronts at the same time for all these areas are intimately interconnected.

The chapter on rights is closed by an article of general limitation:

The rights of man are limited by the rights of others, by the security of all, and by the just demands of the general welfare and the advancement of democracy.

This statement is a recognition of the fact that the rights of man arise because individuals live in communities, and in an ordered society they are protected by that society, but their rights are subject to qualifications and even restrictions where the interests of the community so require. The principle underlying such restrictions seems to be that each individual shall, so far as it is practicable, have an equal enjoyment of his rights and freedoms with every other individual in the community. This equality can perhaps never be fully attained, but it is the measure by which the rights and freedoms of each are limited for the benefit of all.

As its title indicates, the Declaration also concerns itself with the "duties" of man. In the preamble it is stated:

The fulfillment of duty by each individual is a prerequisite to the rights of all. Rights and duties are interrelated in every social and political activity of man.

The duties of the declaration can be classified roughly into social duties, political duties and economic duties. Under the social duties fall the duties to society (art. 29); duties toward children and parents (art. 30); duty to acquire an education (art. 31); duty to serve the community and the nation (art. 34); duty to cooperate with the state with respect to social security and welfare (art. 35). The two economic duties set forth are the duty to pay taxes (art. 36) and the duty to work (art. 37). The political duties listed are the duty to vote (art. 32); the duty to obey the law (art. 33); and the duty to refrain from political activities in a foreign country (art. 38).

The underlying idea of including these duties is that each individual should recognize that he has certain responsibilities to the society in which he lives, and therefore, the stress should not be placed solely upon the responsibility of the state to secure human rights. Nevertheless, one may question the utility of including such a concept in an international document, for the whole basic theory of the protection of human rights on the international level is that the individual can be easily overwhelmed by the aggregate collection of power lodged in a state. On the other hand a sovereign state still retains its power to exact from all individuals the duties which are owed to it.

Furthermore, as the human rights and the duties of man are placed on equal footing in the Declaration, a state denying human rights might well plead that the denial was brought about by failure of the individual or individuals to fulfill the duties which are set forth in the Declaration. Consequently, if the Organization

of American States ever attempted to protect the rights of man on an international level it could well be frustrated.⁵⁶ The inclusion of the duties of man in the Declaration can be labelled a confusion of values. Without doubt the duties listed are some of the major social, political and economic obligations owed by the citizen to his political community. But each nation is still capable of exacting such duties from its citizens without invoking the authority of the whole international legal community.

There was one further action taken at Bogota with relation to human rights—a resolution recommending that the Inter-American Juridical Committee prepare a draft statute providing for the creation and functioning of an Inter-American Court to guarantee the rights of man.⁵⁷ This draft was to be presented at the Tenth Conference of American States “if it felt that the moment had arrived for comment thereon.”

The Inter-American Juridical Committee, which is the permanent committee of the Inter-American Council of Jurists, presented to the Council of Jurists, at their first meeting in May 1950, their unanimous opinion that it would be impossible to create such a statute at this time.⁵⁸ The Committee therefore suggested that the Council inform the Tenth Conference that until such time as a formal convention on human rights governing the inter-American system had come into being, it would be premature to establish enforcement procedures. Hence, the Tenth Conference merely adopted a resolution⁵⁹ reaffirming that each nation should strengthen its system for the protection of human rights. Another resolution was adopted requesting the Council of the OAS to continue its studies on the juridical aspects of protection of human rights in order that the matter might be considered at the Eleventh Inter-American Conference.

While the inter-American system has not as yet constituted legal norms from which human rights can be derived under positive law, it certainly must be acknowledged that the Rio Treaty, the Charter of Bogota and the American Declaration of the Rights and Duties of man have expanded the problem of human rights from the national to the international level by the assertions in all of these in-

56. Accioly, *Principes Generaux de La Responsabilite Internationale d'apres La Doctrine et La Jurisprudence*, 96 RECUEIL DES COURS 353, 356 (1959).

57. FINAL ACT, RES. XXXI, U.S. DEP'T OF STATE, PUB. No. 3263, *op. cit. supra* note 17, at 266.

58. PAN AMERICAN UNION, INTER-AMERICAN COUNCIL OF JURISTS, INTER-AMERICAN COURT TO PROTECT THE RIGHTS OF MAN 2 (1953).

59. FINAL ACT, RES. XXVII, U.S. DEP'T OF STATE, PUB. No. 5692, 101-03 (1954).

struments that the observance of human rights is now a matter of international concern. Thus there is a partial recognition that some aspects of democracy are of hemispheric rather than purely national import and significance.

III. DEMOCRACY AND THE RIO TREATY

Even though there has been an apparent unwillingness to adopt binding legal obligations that each nation in the hemisphere shall become a democracy both in the sense of political democracy and in the sense of human democracy, the inter-American community has, nevertheless, been faced with concrete issues where certain of the American states have sought to impose democracy on neighboring states.

Under Article 6 of the Inter-American Treaty of Reciprocal Assistance of 1947, when there is an act or threat of aggression which is not an armed attack on a nation of the hemisphere or in which there may be "any other fact or situation that might endanger the peace of the Americas" and that affects the inviolability, territorial integrity, sovereignty or political independence of an American state, the organ of consultation of the inter-American system is required to meet immediately. They must agree on measures which, in case of aggression, are to be taken to assist the victim, or in any case, measures which should be taken for the common defense for the maintenance of the peace and security of the continent. The Meeting of Consultation of Ministers of Foreign Affairs was designated as the Organ of Consultation under the Rio Treaty with powers to decide upon the measures to be taken in the field of security whenever a particular case should arise. The Council of the OAS was named as Provisional Organ of Consultation.⁶⁰

Hardly had the ink dried on this document before the OAS was called upon to use the powers granted thereunder to resolve problems relating to freedom and order in the Caribbean-Central American area. In 1948 the Council of the OAS, as Provisional Organ of Consultation, was faced with a case involving Costa Rica and Nicaragua. And in 1949 and 1950 two additional cases, which were in reality the same case, arose involving Haiti, the Dominican Republic, Cuba and Guatemala.⁶¹ The agitations which gave rise

60. For a discussion of the Rio Treaty's Article 6 and the measures to be taken see Thomas & Thomas, *The Organization of American States and Collective Security*, 13 Sw. L.J. 177, 196-202 (1959).

61. These cases may be found in PAN AMERICAN UNION LEGAL DIV., APPLICATIONS OF THE INTER-AMERICAN TREATY OF RECIPROCAL ASSISTANCE 1948-1956 at 19-148 (1957).

to these cases were concerned with political antagonisms between authoritarian governments on the one hand and democratic regimes (or regimes with some democratic tendencies) on the other, and involved the shadowy organization known as the Caribbean Legion, dedicated to the overthrow of dictatorships. Designated as first targets were the dictatorships of Somoza of Nicaragua and Trujillo of the Dominican Republic.⁶² The Caribbean Legion was composed of a strange assortment of mercenaries, adventurers and patriots in political exile. The latter were "battling for their ideals" and hoping to restore democratic government in their various countries, while the former were "taking advantage of that struggle for selfish purposes."⁶³ The Legion was more or less sponsored by Costa Rica, Guatemala and Cuba, which permitted their territories to be used for revolutionary activities such as Legion efforts to organize expeditions and fighting forces for invasion, as well as permitting illegal activities as regards traffic in arms and passage of planes. In retaliation, the Nicaraguan and Dominican governments aided and abetted revolutionary movements and subversive activities aimed at overthrowing the governments of Costa Rica, Guatemala and Cuba. As a result of such activities turmoil and discord existed in the relations of these contending governments which was to erupt in armed invasions by revolutionary groups bent on the overthrow of existing regimes; and conspiratorial plots fomented trouble in democracies as well as dictatorships.

The OAS pointed out that the right of a people to maintain within their own territory a government of their own choosing so long as such action does not endanger other states or the peace of the Americas has long been an established principle of inter-American relations. Further, the OAS has no power to intervene either on behalf of a government or on behalf of internal forces seeking to overthrow that government. But when a foreign nation goes to the aid of rebel forces seeking such an overthrowal, the issue is no longer an internal domestic question, but a controversy between two states which falls under Article 6 of the Rio Treaty.⁶⁴ In each of the cases, the prompt action of the OAS averted fur-

62. An excellent and detailed discussion of these cases and OAS action with reference thereto may be found in Furniss, *The Inter-American System and Recent Caribbean Disputes*, 4 INTERNATIONAL ORGANIZATION 585 (1950).

63. PAN AMERICAN UNION LEGAL DIV. REPORT OF THE INVESTIGATING COMMITTEE OF THE ORGAN OF CONSULTATION RELATIVE TO THE PETITION OF THE DOMINICAN REPUBLIC, *op. cit. supra* note 61, at 120-21.

64. See, e.g., the resolution of the Council acting provisionally as Organ of Consultation in the second Haiti-Dominican Republic case. *Id.* at 128.

ther activities, and resulted in the signing of Pacts of Amity by the contending governments. The Council was adamant in condemning both the democracies and the dictatorships for their intervention. While the OAS acknowledged that representative democracy and participation in government were fundamental to the inter-American system, nevertheless, it declared that endorsement of such principles did not in any way or under any concept authorize any government or group of governments to violate the inter-American commitments relative to the principle of non-intervention. By so doing, the Council of the OAS tacitly admitted that in concrete tests between democracy and human rights versus non-intervention, the latter duty rules supreme.⁶⁵

These initial cases confronting the OAS concerned a conflict between democracy and homegrown American dictatorships. But soon a different type of situation arose. International communism, which breeds on chaos and discontent, was not long delayed in taking advantage of the situations in Central America. By 1954, Guatemala had become of concern to the inter-American community as it became apparent that there was an increasing intervention in its government by the international communist movement.⁶⁶

At the Tenth Inter-American Conference held at Caracas in 1954 the United States called the attention of the other nations of the continent to the fact that should any nation fall completely into the hands of the communists such nation would of necessity be a satellite of the U.S.S.R. and would constitute a serious menace to the peace of the Americas. The Tenth Conference adopted a Declaration of Solidarity for the Preservation of the Political Integrity of the American States against the Intervention of International Communism which stated that domination or control of the political institutions of any American state by the international communist movement would constitute a threat to the sovereignty and political independence of the American states. This would endanger the peace of America and would require a Meeting of Consultation to consider the adoption of appropriate action in accordance with existing treaties.⁶⁷ This language in effect interprets Article 6 of the Rio Treaty in such a way that domination of the government of an American state by international communism requires the application of collective measures for the common

65. *Ibid.*

66. On the Guatemalan Affair see Taylor, *The Guatemalan Affair: A Critique of U.S. Foreign Policy*, 50 AM. POL. SCI. REV. 787 (1956).

67. FINAL ACT, RES. XCIII, U.S. DEP'T OF STATE, PUB. NO. 5692, *op. cit. supra* note 59, at 156-57. For a short discussion of the U.S. position see *id.* at 7-9.

defense and the maintenance of the peace and security of the hemisphere. In other words, in the conflict between non-hemispheric totalitarianism and democracy, there is a possibility that collective intervention could be taken to protect the inter-American ideals of democracy and human rights against the recognized dangers of the international communist movement which neither acknowledges nor accepts such principles. In the case of Guatemala, the communist issue was resolved by the overthrow of the communist oriented government by Guatemalan rebels who invaded from, and with the help of, neighboring countries.

From 1954 to 1959, the tide for democracy began to swell in Latin America, and dictator after dictator was overthrown. However, the struggle between dictatorial and anti-dictatorial factions again spilled outside national borders and into the international arena and again created situations of extreme danger to hemispheric peace. This became very apparent after the dictator Batista departed from Cuba and left the stage to the revolutionary movement of Fidel Castro. Castro, picturing himself as another Bolivar, announced that his revolution, *Fidelismo*, was not only a fight to liberate Cuba from the tyranny of Batista, but was a product for export to help overthrow tyrants wherever they could be found.

With such encouragement, Cuba became the headquarters for the preparation and launching of revolutionary expeditions by Latin American political exiles aided by Cuban authorities. With the ever increasing orientation of the Cuba revolution toward the Moscow-Peiping Axis, such activities were alarming not only because they breached the inter-American international agreements on non-intervention, but also because they were abetted and encouraged by a foreign non-hemispheric power. With *Fidelismo* as the front, anti-yankeeism as the rallying cry, and communism as the directing force, an increasing and continued threat exists for many established governments of Latin America.⁶⁸ And *Fidelismo* seeks the overthrow of democracies as well as dictatorships. Within the space of the first six months of 1959, the governments of Panama, Nicaragua and the Dominican Republic appeared before the Council of the OAS officially charging invasions by exiles and others attempting to overthrow their governments. In each case Cuba was implicated, and in the case of the Dominican charges, Venezuela was also accused of aiding the conspirators.⁶⁹

68. On the impact of the Cuban revolution see Benton, *The Communist Threat at Our Back Door*, N.Y. Times, July 17, 1960, § 6 (Magazine), p. 10; Szulc, *Castro Tries to Export Fidelismo*, *id.*, Nov. 27, 1960 § 6 (Magazine), p. 19.

69. These cases and Council consideration thereof are set forth in PAN

In the Panamanian (which was a democracy) and Nicaraguan (which was a dictatorship) cases, the Council followed the usual procedure of convoking itself as Provisional Organ of Consultation under the terms of the Rio treaty and sent out investigating committees to attempt to settle the matter.⁷⁰ In the Dominican case, however, the pressures were such that the Council was unable to act under the Rio Treaty because the governments of Cuba and Venezuela opposed its application and announced that they would permit no OAS investigation to be carried out in their territory.⁷¹ Other governments of Latin American were also uneasy at any manifestation of support for the dictatorial regime of the Dominican Republic or at any suggestion of censure of attempts to overthrow that government, for most of the democracies of Latin America longed for the downfall of the Trujillo regime, who held power longer than any other dictator on the globe until his assassination in 1961.

Action was required, however, as the inter-American system had taken the stand that non-intervention was superior to the assurance of democracy in every nation. A compromise therefore was found. Instead of convening the Foreign Ministers as Organ of Consultation or the Council as Provisional Organ of Consultation which might have necessitated enforcement measures against the aggressors under the Rio Treaty, the Council resorted to Articles 39 and 40 of the Charter of Bogota which permits a Meeting of Foreign Ministers to consider problems of urgent and common interest to the American states. Under these provisions the Foreign Ministers have power only to consider sanctions not to take them. Thus a meeting of Foreign Ministers was called to consider the whole problem of tensions in the Caribbean area with a view to the restoration of peace and security, confidence and friendly relations among the republics of the region by cooperation through the OAS. Two main problems, political unrest in the Caribbean and effective exercise of representative democracy in the hemisphere, were to be considered. Issues emanating from these two problems were non-intervention, political democracy, human rights, and the relation of economic development to political stability. Actually the essential problem of the Fifth Meeting of Consultation when it convened in Santiago on August 12, 1959, was to reconcile the growing demand for democratic progress and social

AMERICAN UNION, *APLICACIONES DEL TRATADO INTERAMERICANO DE ASISTENCIA RECIPROCA 1948-1960*, at 259.

70. *Id.* at 301, 346.

71. *Id.* at 387-90. See also STEBBINS, *THE UNITED STATES IN WORLD AFFAIRS* 352-56 (1959).

change in Latin America, and particularly in the Caribbean, with the traditional inter-American principles of non-intervention in internal affairs and peaceful relations. Opinions as to how these two requirements should be reconciled differed widely.⁷²

Cuba and Venezuela called upon the hemispheric democracies to band together in condemnation of all dictatorships and specifically that of the Dominican government. The Venezuelan Foreign Minister took the position that only democratic governments should be admitted to the OAS. A democratic country was defined as one with freedom of the press, periodic changes of government by peaceful means, and effective suffrage. The argument that democracy could not be imposed on a nation by outside forces was refuted, and a demand for collective action was made to end dictatorial abuse of democracy and human rights. It was stated that such collective action could not be equated with intervention.⁷³

The overwhelming majority of American governments rejected the Cuban and Venezuelan thesis, re-endorsed the principle of non-intervention, and rejected the notion that collective action should be permitted to overthrow Latin American dictatorships. Again the Latin Americans indicated that dictatorships, no matter how deplorable they might be, were to be preferred over any action which might lessen the effectiveness of internal sovereignty. Nevertheless, the meeting at Santiago again went on to give extensive expressions of support for democracy, and respect for human rights. A declaration was adopted, known as the Declaration of Santiago, which announced in its preamble that it was

the general aspiration of the American peoples to live in peace under the protection of democratic institutions, free from all intervention and all totalitarian influence.⁷⁴

The Declaration reaffirmed that there was a relationship between respect for human rights, fundamental freedoms, and the effective exercise of representative democracy on the one hand and inter-American peace and harmony on the other. It noted that failure to adhere to the principles of democracy is "a source of widespread disturbance and gives rise to emigration that causes frequent

72. On the background of the Santiago Meeting see 41 DEP'T STATE BULL. 299-306 (1959); N.Y. Times, Aug. 13, 1959, p. 1, col. 7.

73. *Id.*, Aug. 16, 1959, § 1, p. 7, col. 1. For a summation of the ideas of the Foreign Minister of Venezuela at the Meeting see Compton, *What About Intervention?*, Americas, Nov. 1959, pp. 3, 6.

74. The Declaration of Santiago is set forth in 41 DEP'T STATE BULL. 342-43 (1959).

and grave political tensions between the state the emigres leave and the states that receive them.”⁷⁵

The Declaration went beyond former inter-American pronouncements in favor of democracy in that it listed in a detailed manner the usual attributes of a democratic system. The purpose of the list was to permit national and international public opinion to judge whether or not a particular regime measures up to democratic standards. Such an announcement, it was stated, would help to eradicate “forms of dictatorship, despotism, or tyranny.” An amendment to this statement cautiously concluded: “without weakening respect for the rights of peoples freely to choose their own form of government.”

The attributes of a democratic regime were set forth as follows:

1. The principle of the rule of law should be assured by the separation of powers, and by the control of the legality of governmental acts by competent organs of the state.
2. The governments of the American republics should be derived from free elections.
3. Perpetuation in power, or the exercise of power without a fixed term and with the manifest intent of perpetuation, is incompatible with the effective exercise of democracy.
4. The governments of the American states should ensure a system of freedom for the individual and social justice based on respect for fundamental human rights.
5. The human rights incorporated into the legislation of the various American states should be protected by effective judicial procedures.
6. The systematic use of political proscription is contrary to American democratic order.
7. Freedom of the press, of radio and television, and, in general, freedom of information and expression, are essential conditions for the existence of a democratic regime.
8. The American states, in order to strengthen democratic institutions, should cooperate among themselves within the limits of their resources and the framework of their laws so as to strengthen and develop their economic structure, and achieve just and humane living conditions for their people.⁷⁶

This Declaration of Santiago was an admission by the inter-American system that the hitherto vague statements of principles relating to democracy did little to provide a clear ground for distinguishing democracy from alternative political schemes. The moment had arrived, intellectually as well as practically, when the statesmen of the Americas were willing to take one more step—possibly small and faltering—toward their professed goal by

75. *Ibid.*

76. *Ibid.*

establishing a more definite description of the nature of that goal. At the Santiago meeting the Foreign Ministers also expanded the powers of the Inter-American Peace Committee, an agency composed of representatives of five American nations which had previously been granted the duty of keeping vigilance to insure the prompt settlement of disputes between American republics. The Committee was given power to suggest measures for the peaceful settlement of such disputes, although such suggested measures were in no wise legally binding on the disputants or on the OAS.⁷⁷ Under its new mandate the Peace Committee was entrusted with the examination of:

1. Methods and procedures to prevent any activities from abroad designed to overthrow established governments or provoke instances of intervention or acts of aggressions;
2. The relationship between violations of human rights or the non-exercise of representative democracy, on the one hand, and the political tensions that affect the peace of the hemisphere, on the other; and
3. The relationship between economic underdevelopment and political instability.⁷⁸

In examining these issues the Peace Committee could take action at the request of governments or on its own initiative although in either event its activity remained subject to the consent of a state in the event an investigation had to be carried on within the territorial boundaries of that state. Broad studies were to be initiated immediately and a preliminary report was to be prepared so that the American governments might formulate their observations thereon. After taking into account these observations, a definitive report was to be presented at the forth-coming Eleventh Inter-American Conference scheduled to meet at Quito, Ecuador.

In spite of the strong reaffirmation of democracy as an inter-American principle, the results of the Santiago conference did little to alleviate tensions in the Caribbean and the situation continued to harass the OAS. In February, 1960, Venezuela charged that the Trujillo Government was flagrantly violating human rights by mass political arrests and imprisonment. The Council again was faced with the problem of the conflict between the principle of non-intervention and the principle of maintenance of respect for

77. For discussion of the Inter-American Peace Committee see Fenwick, *The Inter-American Peace Committee*, 43 AM. J. INT'L L. 770 (1949); U.S. DEP'T OF STATE, PUB. NO. 5692 *op. cit. supra* note 59, at 13-14. For text of the Statutes of the Committee see PAN AMERICAN UNION, STATUTES OF THE INTER-AMERICAN PEACE COMMITTEE (1956).

78. The Resolution of Inter-American Peace Committee is set forth in 41 DEP'T STATE BULL. 343-44 (1959).

human rights, the crux of the problem being how to conduct an investigation into Venezuela's allegations without intervening in the government of the Dominican Republic. The Council agreed to give the function of investigation to the Inter-American Peace Committee under the Santiago mandate.⁷⁹ The Committee's investigation verified Venezuela's charges. They found the Dominican Republic guilty of the denial of freedom of speech and assembly, arbitrary arrest, cruel and inhuman treatment of prisoners, and the use of intimidation and terror as political weapons. The Committee's report stressed the fact that international tensions in the Caribbean area would continue to increase as long as the Dominican Republic remained a dictatorship and did not live up to the ideals of democracy.⁸⁰ No immediate action was taken by the OAS and the Caribbean continued to seethe. Castro's Cuba, aligning itself ever closer with the Communist bloc, shouted daily vituperations at the United States and at many Latin American regimes including the democracies of Venezuela, Argentina and Costa Rica. Rattling Russia's missiles, Castro continued an unceasing campaign of expropriation of the property of American citizens in Cuba. Although a bitter enemy of the Trujillo regime when he first came to power, Castro gradually ceased his tirades against that government, and in turn the Trujillo regime stopped beaming anti-Castro radio programs to Cuba. It was soon reliably reported that these two dictators had arrived at some sort of rapprochement, leaving Trujillo free to concentrate on their now mutual enemy, President Betancourt of Venezuela.⁸¹

The month of July, 1960, was filled with charges and counter charges. Venezuela requested the OAS Council to call a Meeting of Foreign Ministers to consider acts of intervention and aggression by the Dominican Government against Venezuela which had culminated in June with an attempt to assassinate President Betancourt.⁸² Meanwhile the United States, heartily sick of Castro's unending vilifications and unceasing animosity against American citizens and property, cut the Cuban sugar quota.⁸³ In retaliation, Castro immediately nationalized the remaining property of Americans in Cuba. Russia threatened attack on the United States if Cuba were faced with armed aggression and in addition offered to purchase, at world market prices, all Cuban sugar refused by the

79. N.Y. Times, Feb. 6, 1960, p. 1, col. 5; *id.*, Feb. 9, 1960, p. 1, col. 5; *id.*, Feb. 12, 1960, p. 10, col. 6; *id.*, Feb. 16, 1960, p. 11, col. 1.

80. *Id.*, June 9, 1960, p. 1, col. 1.

81. *Id.*, Jan. 5, 1961, p. 1, col. 3.

82. PAN AMERICAN UNION, APLICACIONES DEL TRATADO INTERAMERICANO DE ASISTENCIA RECIPROCA, *op. cit. supra* note 69, at 393.

83. N.Y. Times, July 7, 1960, p. 1, col. 8.

United States. Russia assured Cuba of vast Soviet economic and moral support, and declared the Monroe Doctrine to be dead.⁸⁴ President Eisenhower then retorted that the United States would not stand by idly and permit the establishment in the Western Hemisphere of any regime dominated by international communism.⁸⁵ Cuba sought and obtained an emergency hearing of the Security Council of the United Nations, charging that the United States was guilty of aggressive acts toward Cuba. At the urging of Ecuador and Argentina a motion was approved by the Security Council referring the issue of Cuban-United States relations to the OAS.⁸⁶

An emergency session of the Council of the OAS,⁸⁷ reviewing the Caribbean problems, decided to call a Foreign Ministers Meeting at San Jose, Costa Rica. This meeting, the Sixth Meeting of Foreign Ministers, was convened on August 16, 1960.⁸⁸ This was the first Meeting of Foreign Ministers ever convened as Organ of Consultation acting under the Rio Treaty, and it was so convened to take up the Venezuelan charges of aggression by the Dominican Republic. An investigating committee, which had probed into Venezuela's charges, indicted the Trujillo regime for complicity in the attempt against the life of President Betancourt.⁸⁹ The preponderate feeling of the Ministers was that punitive action should be taken against the Dominican Republic. Hence, for the first time, the collective measures of the Rio Treaty, as authorized by Articles 6 and 8, were applied. The Organ of Consultation called for an immediate break in diplomatic relations and for a partial interruption of economic relations by all the member states. Such measure was to continue until the Council, by a two-thirds vote, should decide that the Dominican Government had ceased to constitute a danger to the peace and security of the hemisphere.⁹⁰ This action was taken because the Dominican Republic had engaged in acts of aggression and not because of the nondemocratic aspects of the regime.

However, the United States, feeling strongly that the two (aggression and nondemocracy) were connected, proposed that more

84. *Id.*, July 10, 1960, § 1, p. 1, col. 8.

85. *Id.*, July 10, 1960, § 1, p. 1, col. 5; *id.*, July 13, 1960, p. 1, col. 4.

86. *Id.*, July 12, 1960, p. 1, col. 3; *id.*, July 16, 1960, p. 1, col. 4; *id.*, July 18, 1960, p. 1, col. 4; *id.*, July 20, 1960, p. 1, col. 4.

87. *Id.*, July 19, 1960, p. 10, col. 2; *id.*, July 30, 1960, p. 4, col. 1.

88. *Id.*, Aug. 16, 1960, p. 12, col. 7; *id.*, Aug. 21, 1960, § 1, p. 1, col. 5.

89. *Id.*, Aug. 19, 1960, p. 1, col. 2; *id.*, Aug. 21, 1960, § 1, p. 1, col. 5; *id.*, Aug. 23, 1960, p. 6, col. 7.

90. 43 DEP'T STATE BULL. 358 (1960).

should be done and that the OAS action should be linked with the establishment of democracy in the Dominican Republic. The United States suggested that in place of the sanctions proposed by Latin America, the Organization should call upon the Dominican Republic to accept inter-American supervision of free elections in that nation after a period of free expression and free assembly. If the Dominican Government refused to receive such supervision, strong sanctions should be imposed not as punitive measures for aggression only but as measures to force the Dominican Government to accede to the international organization.⁹¹ This then was a major effort to enforce political democracy and human rights against a member of the inter-American community violating these avowed community principles.

This proposal of the United States met with cool reception from the Latin American nations. Because it was tantamount to setting up a provisional inter-American political trusteeship over the Dominican Republic, most Latin American nations felt this was outside the power of the OAS. It smacked of collective intervention.⁹² The Latin American democracies had for years been demanding an ouster of the Trujillo regime, but when faced with a legitimate manner of so doing under inter-American treaties, they could not bring themselves to the point where they would concede that democracy was more important than non-intervention. Their attitude naturally was colored by the hope that the moral impact of the rupture of relations, the condemnation of the Trujillo government, and the partial rupture of economic relations would be sufficient to topple the Trujillo regime. Therefore, the United States proposal was rejected and sanctions for aggressive acts were imposed, the United States agreeing to accept the Latin American views. Only after this move had been taken did some concern arise in the minds of Latin American statesmen that if Trujillo were thus toppled a power vacuum might arise in the Dominican Republic which immediately could be taken over by a Castro-Communist government.⁹³

After a delay of twenty-four hours following its deliberation and action in the Venezuelan-Dominican controversy, the Foreign Ministers at San Jose turned to the problem of Cuba-United States relations. The meeting at this point was called the Seventh Meeting of Ministers of Foreign Affairs and was not held under the Rio Treaty but was called "to consider problems of an urgent nature

91. *Id.* at 355-58.

92. N.Y. Times, Aug. 19, 1960, p. 1, col. 2.

93. *Id.*, Aug. 21, 1960, § 1, p. 1, col. 5.

and of common interest."⁹⁴ From the outset it was clear that many of the ministers present, although disturbed by the communist penetration of a hemispheric nation and by Cuba's unending war of propaganda attempting to promote unrest and revolutions throughout the Americas, were prevented from taking a strong stand because of the widespread sympathy with *Fidelismo* among their own peoples. Many Latin Americans are in deep sympathy with the Castro revolution for they see in its drastic economic reform efforts to correct evils which are a part of most of the Latin American scene, *i.e.*, concentration of ownership of land and other forms of wealth in the hands of a few, poverty of the masses, lack of opportunity, and lack of industrialization. As anti-Americanism has long been a favorite rallying cry for all of Latin America, Castro's tweaking of the eagle's beak has not been unrelished, and very few Latin American governments were willing, in face of a widespread internal sympathy for Castro, to risk political overturn by pro-Castro masses.⁹⁵

The Foreign Minister of Columbia was a most cogent speaker for the Latin American viewpoint. He expressed support for the aims of the Cuban revolution, and openly declared that if the controversy were between the United States and Cuba solely, the Latin Americans would all be on the side of Cuba; but in a conflict between America and Russia, or between democracy and international communism, no nation in the hemisphere could remain neutral.⁹⁶ The United States Secretary of State, Christian Herter, pointed out that Sino-Soviet imperialism was exploiting the situation in Cuba as a means of installing a communist regime there, which meant not only the loss of that country's independence but also the establishment of an excellent operational base for communist infiltration and subversion against all other American nations. He pointed out that resistance to such extracontinental intervention was the cornerstone of the inter-American system, and to permit communist intervention in this hemisphere was to negate the basic political objectives of the American people—namely the establishment of political democracy and the recognition of human rights and freedoms.

Taking the Declaration of Santiago as the instrument setting forth the inter-American concept of what democracy entailed, Herter listed one by one the violations by Cuba of the principles enunciated in that document. Cuban suppression of these democrat-

94. Art. 39, Charter of OAS, U.S. DEP'T OF STATE, PUB. NO. 3263, *op. cit. supra* note 17, at 173.

95. See note 68 *supra*.

96. N.Y. Times, Aug. 24, 1960, p. 19, col. 3.

ic freedoms to serve the purposes of an extracontinental power was no longer a local and internal matter but should be a matter of deepest concern to all members of the OAS. The United States therefore called upon the members of the Organization to condemn communist intervention in inter-American affairs and to indicate grave concern over Cuba's toleration and encouragement of such intervention. Herter did not seek sanctions against Cuba, but merely a censure of that nation's government as a warning.⁹⁷

Most Latin American delegates were unwilling to go along with such a strong denunciation of Cuba, again using the doctrine of non-intervention to thwart any possible actions to aid in the spread of political democracy. Thus, they indirectly aided an alien ideology which was seeking to extend its dictatorial system to all of Latin America. The declaration which did come out of the Seventh Meeting of Ministers of Foreign Affairs placed the OAS on record against communist intervention in the Americas, without specifically naming Cuba, and condemned the attempts by Russia and Communist China to make use of the political or social situation of any American state for their own purposes. The document reasserted the axiom that the inter-American system was incompatible with any form of totalitarianism.⁹⁸

While the United States delegates attempted to read into the resolution a rebuke of Cuba, most Latin American delegates did not agree. They saw in the resolution a mere appeal to Cuba to seek protection within the inter-American system rather than within the communist orbit. The Mexican delegate went so far as to issue a special statement to the effect that the declaration was general in character and did not constitute a condemnation or threat against Cuba.⁹⁹

One significant statement in favor of democracy was sent to the Seventh Meeting of Ministers of Foreign Affairs by President Betancourt of Venezuela.¹⁰⁰ He called for a declaration or a treaty to be drawn up at the Eleventh Inter-American Conference which would oust from the OAS governments not freely elected by the people of the country. This instrument, he stated, should also stipulate that member states were under a duty to respect the fundamental rights of man, guarantee freedom of the press and information, and recognize the rights of minorities to organize political

97. Statements made by Secretary Herter, 43 DEP'T STATE BULL. 395-407 (1960).

98. Declaration of San Jose, Costa Rica, *id.* at 407-08; see also N.Y. Times, Aug. 27, 1960, p. 4, col. 1; *id.*, Aug. 29, 1960, p. 1, col. 8.

99. *Id.*, Aug. 30, 1960, p. 1, col. 6.

100. *Id.*, Aug. 24, 1960, p. 19, col. 4.

parties. This plan would involve sanctions, against any state violating such principles, by isolation and exclusion from the inter-American community. Betancourt deemed such sanctions as a protection against dictatorships of the right or of the left.

By January 1961, it had become apparent that the break in diplomatic relations which followed the San Jose meeting and the almost universal hostility toward the Dominican Republic had little apparent effect in weakening Trujillo. The latter continued in power by ruthless elimination of any possible rivals and by denial of fundamental rights to his people. In an effort to bring further pressure on Trujillo, the Council of the Organization of American States voted to cut off exports of oil and trucks to the Dominican Republic, although a number of Latin American nations abstained from voting on this issue, either on the ground of non-intervention or because they had come to believe such measures were not effective in view of the cold war realities.¹⁰¹

CONCLUSION

In summation, what conclusions can be drawn from the pronouncements and practices of the OAS concerning collective efforts to advance democracy in the Western Hemisphere? It should be apparent that Pan Americanism has placed its major stress upon the principle that a state must be free to choose any form of government or political institution it desires. Further, it must be free to treat its own citizens as it wishes, and no other nation or group of nations may interfere in this protected sphere. Since the first stirrings of the movement, democracy has been stressed as an inter-American goal. In recent years many resolutions and declarations have pledged the American nations to political democracy and to the protection of human rights. Nevertheless, no firm legal obligations backed by adequate sanctions have been agreed upon to assure the growth of democracy throughout the region.

In actual situations involving contests between democracy and indigenous dictatorships arising before the Organization since World War II, little comfort can be found in the actions of the Council of the OAS for those seeking to foster democratic governments and observance of human rights in the Americas. The Council has clearly indicated that whatever collective measures were prescribed, they were taken only for the prevention of the use of force or threats thereof as international instruments of political change and were not related to the characteristics of any internal regime. Collective measures under the Rio Treaty were to be taken

101. *Id.*, Jan. 5, 1961, p. 1, col. 7.

against any nation menacing or breaching the peace without taking into consideration the question of whether the delinquent nation was attempting to foster democracy or totalitarianism. Judging from the Council's action, non-intervention was to be upheld in every circumstance under the assumption that the internal form of government of any state was relatively unimportant to inter-American peace and security. At least, it was not of sufficient significance to justify collective measures to assure internal democracy.

This staunch maintenance of the absolute right of internal self-determination resulted in the immunity of totalitarian dictatorships from outside pressures for democratic purposes. Yet once the totalitarian government obtained a stranglehold upon the people of a nation, it often embarked upon external aggressive policies that brought with them international conflict. Immunity from collective intervention became a tool of those who used democratic rights to destroy democracy and international law rights to destroy international law.

While the inter-American system was unwilling to authorize measures to overthrow indigenous dictatorships, it did to a limited extent recognize the aggressive nature of international communism as a threat to the peace of the Americas. By the Declaration of Caracas it cleared the way for collective measures under the Rio Treaty against an American state dominated by this type of totalitarianism. It should be noted, however, that the loss of democratic values in an American state absorbed by the international communist movement was not the primary motivating force behind the Declaration of Caracas. In sponsoring the declaration, the United States stressed that its concern over communist penetration in the hemisphere was based on the requirement of hemispheric security, not on the political color of a national government.

At the behest of the Latin American nations, still over concerned with non-intervention and under concerned with the goals of democracy, the Declaration of Caracas carefully stated:

This declaration of foreign policy made by the American republics in relation to dangers originating outside this Hemisphere, is designed to protect and not to impair the inalienable right of each American state freely to choose its own form of government and economic system and to live its own social and cultural life.¹⁰²

It was maintained that this clause stipulated that each Latin American nation is to continue free from the threat of intervention in the event a local political party should succeed in imposing up-

102. U.S. DEP'T OF STATE, PUB. NO. 5692, *op. cit. supra* note 59, at 157.

on the people a "national" (as distinguished from an "international") brand of communism.¹⁰³ This view completely ignores international reality, for a national brand of communism is indeed uncommon.

At the San Jose meeting in 1960, it was re-emphasized that international communism was contrary to the democratic principles espoused by the Americas and was a threat to hemispheric peace and security. However, no sanctions were proposed against the American nation which, if one may judge from substantial evidence, has become linked to the international communist movement. Even the condemnation of Sino-Soviet intervention by those gathered at San Jose was said by some of the delegates not to be a condemnation of the particular American nation which had invited such intervention. Notwithstanding such an attitude, the American nations, in the Declaration of Caracas, have gone on record that collective enforcement machinery does exist for action against a regime dominated by international communism. That the American republics have not had the political fortitude to make use of it is another matter.

But aside from the non-democratic international communist movement, which due to its subversive and aggressive nature constitutes a special threat to the security of the hemisphere, in reality the collective advancement of democracy has fared poorly at the hands of the OAS.

A sharp division between the ideal and the real, between official platitudes and official policy has characterized the relationship between democracy and hemispheric unity. The nations of the Americas have proclaimed the lofty goals of democracy, but they have remained, for the most part, unwilling or unable to implement them. Consequently it would seem that all the inter-American declarations and avowals on democracy are but exercises in futility, frustration and self-deception.

It is easy to condemn such inconsistency as undesirable, unwholesome and even immoral. But to do so is to overlook the fact that to Latin America the importance of such proclamations lies in the fact that they are anticipatory. That is, they represent the "ought to be" rather than present reality. In this respect the pronouncements must not be underestimated. A group of nations which together has a vision, however hazy, of the path which they wish to travel together has developed the first essential of a true international community. When the total inter-American world thus subscribes

103. Irizarry y Puente, *The Doctrines of Recognition and Intervention in Latin America*, 28 TUL. L. REV. 313, 341 (1954).

unhesitatingly to democratic ideals, the prompt achievement may not be forthcoming, but the dream has some validity.

Man is, after all, an ideological animal. He acts in accordance with his innermost convictions. Thus when the nations of the Americas establish, as they did at Santiago in 1959, an excellent outline of democratic policy which epitomizes the philosophical and political creed of all the peoples of the Americas, they set forth a ceiling toward which governments and people should strive. While the Santiago meeting stopped short of the creation of any new procedures to secure democracy in nations with despotic governments, and even re-emphasized absolute non-intervention, it nevertheless did set up a standard which the spotlight of public opinion can use to measure violations of democracy. This may alert the people of a nation and the people of the hemisphere to the dangers inherent in those governments which fail to measure up. This appeal to public opinion, even without any threat of other action may, at some times and under some circumstances, have a compelling effect on governments. It can do so by either internally arousing the people to rise up against the regime, or externally threatening the loss of international respect and prestige or some other deference value which may be of importance.

The Inter-American Peace Committee in effect appealed to the censure of public opinion when it investigated and condemned the flagrant denial of human rights by the Trujillo Government. The Dominican Government complained bitterly that such investigation and censure were interventionary in character and in contradiction to the non-intervention principle even though no enforcement measures followed at the time. While in this case the power to study, investigate, recommend and condemn did not have the coercive effect of compelling the Dominican Government to act in accord with the will of the OAS, it was sufficiently disturbing to elicit protests from that government.

Of greater significance was the equating by the Inter-American Peace Committee in the Dominican case of a flagrant denial of human rights and lack of representative democracy by a local despot with hemispheric tensions and threats to the peace. The germ of this idea is to be found in the Declaration of Santiago where it was said:

That harmony among the American republics can be effective only insofar as human rights and fundamental freedoms and the exercise of representative democracy are a reality within every one of them, since experience has demonstrated that failure to adhere to such principles is a source of widespread disturbance and gives rise to emigration that

causes frequent and grave political tensions between the state the emigrés leave and the states that receive them;

That the existence of anti-democratic regimes constitutes a violation of the principles on which the Organization of American States is founded, and endangers the living together in peaceful solidarity in the hemisphere.¹⁰⁴

It was United States Secretary of State Herter who attempted to bring the idea to full fruition at the San Jose meeting in 1960. He did so by showing that hemispheric tensions and threats to the peace created by denial of human rights and political democracy would permit the application of coercive measures under the Rio Treaty against nations such as the Dominican Republic. To sustain his argument he harked back to the Peace Committee's report which blamed the aggravation of Caribbean tensions upon the widespread violations of human rights in the Dominican Republic and which declared that these tensions would continue and increase so long as such violations persisted. Herter, following the lead of Kant and Rodriguez Larreta, declared that collective measures to obtain respect for human rights and the assurance of democracy were necessary to remove threats of aggression and threats to the peace.

Latin America again shied away from this theory, preferring to deal only with the symptoms of the disease and not the disease itself. They were willing to apply diplomatic and economic sanctions under the Rio Treaty against the Dominican Republic for its international aggressions, but were unwilling to force the Dominican Republic to hold free democratic elections under the control of the OAS. Presumably some nations believed that such sanctions for aggressive action would topple the Dominican dictator without forcing direct action to attain the inter-American goal of democracy. So far this hope has been frustrated. Whether, in the face of such frustration and in the face of continuing Caribbean tension, they will continue to limit the OAS actions to improvisations and sporadic counterpunching, or whether they will eventually be willing to take a long step forward and permit the OAS to give purposeful direction to continental democracy remains to be seen.

In any event, in recent times a path has been dimly lighted showing that inter-American machinery does exist under the Rio Treaty for multilateral measures to assure democracy not only when the democratic principles are violated by international communism, but also when they are violated by an American dictatorship unaffected by extra-continental ideology.

104. Declaration of Santiago, *supra* note 74.

There is great controversy over the issue of whether collective measures should be taken for democracy and whether such measures will always be effective for such a purpose. As of now, the OAS can act only under the Rio Treaty when totalitarianism becomes a threat to hemispheric peace. This may be too late to take effective action to ensure democracy, for once a dictator is firmly ensconced in power, with all the modern informational facilities at his control, he can force his people to uphold their dictatorial regime in a fit of patriotic fervor against interventionary measures from outside. Another problem is the extent and kind of collective action that should be taken. The Dominican case has highlighted the fact that diplomatic and economic isolation may not be sufficient. Nations outside the hemisphere, and even some within it, have demonstrated that they are quite willing to fill such a vacuum. Herter's suggestion of requiring the Dominican Government to hold free democratic elections under the supervision of the OAS could possibly not have come about without the use of force. Thus it would seem that reliance on coercion in an area such as this would mean, in practice, a choice between tacit appeasement so that the international situation will not be further aggravated, or collective use of force in order to enforce a principle. By the use of collective force a dictator probably could be removed, a country pacified, human rights secured and free elections held. But the legal problem which arises here is that the American nations, either individually or through collective action under their regional organization, are prohibited from using armed force by the United Nations Charter except in cases of individual or collective self-defense.¹⁰⁵

A further criticism of the use of sanctions or collective measures to promote or re-establish democracy is the suffering that may be brought upon the heads of innocent people. This, of course, must be balanced against the suffering they endure under the dictatorship. It is axiomatic that once freedom is lost, tyrants are not to be shaken off again without endless pain.

It is argued that no international organization ought to step in to redress antidemocratic situations because there is no absolute definition of democracy which would enable an organization at all times to judge accurately whether a particular government is

105. Art. 2, Paragraph 4 of the U.N. Charter prohibits the members from the threat or use of force. Article 51 of the Charter makes an exception and permits such use in the right of individual or collective self-defense. Otherwise by the terms of Article 53 regional agencies may take no enforcement action unless authorized by the Security Council. On the right of self-defense under the Rio Treaty and the U.N. Charter see Thomas & Thomas, *supra* note 60, at 178-202.

or is not democratic. If the inter-American system were to use all of the high aims expressed in the American Declaration of the Rights and Duties of Man as its standard, this argument might be valid, but the Declaration of Santiago, being more limited and more realistic, establishes a reasonable standard against which governments can be measured. The inter-American system cannot seek perfection. In trying to secure democracy it cannot demand the realization of the sum total of the democratic ideal or nothing else. Rather, it must try to introduce into reality as much of the ideal as is possible at any given time. It would be manifestly impossible to correct every deviation from the goals of democracy in the Americas. Under present treaties, the OAS is limited to maintaining continental peace and could only take action in situations where totalitarianism has created international political tensions. The Dominican case has shown that such a situation is readily recognizable.

An entirely separate problem is the feasibility or the possibility of imposing democracy upon a people from without. If democracy is foisted upon a people, foreign and unassimilated, as a political penicillin warranted to cure all social ills, it will fail unless it manifestly promotes stability and public order. Should democracy fail, the way is left open for a more compulsive creed such as communism. Democracy grows from decent and capable rulers, a sense of historical achievement, some geographical security from external aggression, a sense of social responsibility, a minimum of mutual confidence between the citizens of the state, and reasonable prosperity. In Latin America, the latter is particularly important, for without prosperity or hope of prosperity democracy cannot function. Therefore in Latin America the fate of democratic institutions is bound up with the continuation of land reform, the integration of the agricultural classes into the state, economic and social progress. In a society with deep seated sources of social discontent, extremism cannot be overcome simply by invoking the superior values, moral and political, of democratic government. They have to be demonstrated by action. History teaches that ultimate stability is achieved not by attempting to suppress changes in the established order, but by understanding the underlying forces and imprinting upon the process itself the outlines of the desirable outcome. The task of the OAS, therefore, must be more than just overthrowing a dictator and holding free elections. It must give purposeful direction to the process of change in a newly freed nation. New creative solutions must be found if democratic ideas are effectively to shape the life of this hemisphere. They

must become dynamic ideas which are given substance. A more stable continental environment calls for finding ways of influencing the course of social revolution sweeping Latin America so that when it has run its course, the nations will not emerge as totalitarian but rather as nations where democratic values can flourish and society prosper. The task for those who cherish freedom is to develop the capabilities of the Latin American countries for democracy and to see that the possibility of enjoying their economic progress in freedom is open to them.

But in the immediate sense, when outrageous denials of democratic freedom lead to threats and breaches of inter-American peace, the OAS has a mandate to act. It must utilize all collective measures to remove the threat to peace caused by antidemocratic regimes, always bearing in mind that care will be required to steer a proper course between excessive zeal and unjustified caution. It is to be hoped that the nations of Latin America will awaken to the fact that the dogma of absolute sovereignty, of non-intervention, is maintained at an incalculable cost to the well being of the whole hemisphere. No community can be held together long unless it has a more positive ideal than the maximum of non-interference in the affairs of its members. There must be a minimum of mutual confidence between the nations of the Americas so they can cooperate freely in seeking democratic goals. The things that unite the American nations are far greater and more potent than those that divide them. But the things that unite must become dynamic and the unity must be translated into action.

There is no solution or set of solutions that will effectively and permanently eliminate all oppressive governments from the hemisphere. However, if the nations of the Americas are motivated by good will and guided by reason, they can work out piecemeal solutions to the problems of oppressive power as these problems manifest themselves. Through collective action under the OAS they may be able to enforce some democratic regimes in one country if not in another. Eventually, if the Americas retain both courage and respect for democratic rights, democracy may become secure in all of the nations of the Western Hemisphere. There is no patented solution to the problem. The OAS can seek only to effect running adjustments to work out tentative and even imperfect—because they are experimental—solutions.

It is impossible to predict with certainty whether the immediate future of the Western Hemisphere lies with democracy or tyranny, but the fundamental cleavages in the world today cannot be compromised or eliminated merely by renewed avowals of dedication

to the goals and ideals of democracy and human rights. The American nations must bear in mind that proclamations and declarations alone do not create democracy. Democracy is at the crossroads, and to survive it must be defended by all the potentials of the inter-American community. The lofty but unimplemented statements laid down as hemispheric goals must be backed by the organized power of the inter-American system or they should no longer be considered as inter-American principles. By failing to promote democracy and respect for human rights, by failing to take definitive action for their defense, by creating a wide discrepancy between professed ideals and a willingness to work for those ideals, the inter-American system is merely smoothing the way for anti-democratic alternatives. If democracy is worth defending, it is worth defending now. The time has come to "suit the action to the word, the word to the action."¹⁰⁶

106. SHAKESPEARE, *HAMLET* Act III, Sc. 2, Line 20.